APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,366	07/03/2001	Gennaro A. Cuomo	RSW920000184US1	1082

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DUKE W. YEE, ESQ.
YEE $ ASSOCIATES
4100 ALPHA ROAD
SUITE 1100
DALLAS, TX 75244

EXAMINER
TO, JENNIFER N

ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

· A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **3** MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *03/15/2005*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1,2,5,6,8-10,13,14,16-18,21,22 and 24* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) *1,2,5,6,8-10,13,14,16-18,21,22 and 24* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *03 July 2001* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-2, 5-6, 8-10, 13-14, 16-18, 21-22, and 24 are presented for

pending.

Claim Objections

2.   Claims 1, 9, and 17 are objected to because of the following informalities:

lines 18-20, the term "ones" should be "one". Appropriate correction is required.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or
> composition of matter, or any new and useful improvement thereof, may obtain a patent
> therefor, subject to the conditions and requirements of this title.

4.   Claims 9-10, and 13-14 are rejected under 35 U.S.C. 101 because they

are directed to non-statutory subject matter.

5.   As per claims 9-10, and 13-14, they are directed to a non-statutory subject

matter and are rejected under 35 U.S.C. 101 because they are lacking of utilities.

Furthermore, they are not tangibly embodied in a manner so as to be executable.

(i.e. the computer program must be stored in a computer readable medium,

executable by a computer element to perform a control of a technical procedure).

Claim Rejections - 35 USC § 112

6.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter in which the applicant regards as his invention.

7.   Claims 1-2, 5-6, 8-10, 13-14, 16-18, 21-22, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

    a. The claim language in the following claims is not clearly understood:

        i.   As per claims 1 (lines 18-23), 9, and 17, it is not clearly understood what is meant by "regardless of whether said first one of said plurality of priorities is a higher priority than said second one of said plurality of priorities" (i.e. since the first one is higher in priority, it's obvious that all the associated requests that stored in first one of the queues will be processing first then the second queues; or applicant intends to say "regardless of whether said first one of said plurality of priorities is a higher priority or not than said second one of said plurality of priorities").

        ii. as per claim 6, line 3, it is uncertain whether "requests" is referring to HTTP requests or different type of requests.

        iii. as per claims 14, and 22, they are having the same deficiency as claim 6. Appropriate corrections are required.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 1-2, 5, 8-10, 13, 16-18, 21, and 24 are rejected under 35 U.S.C.

103(a) as being unpatentable over HP WebQoS (hereafter HP) ("HP WebQoS

Overview", 1999), in view of Bhatti et al ("Web Server Support for Tiered

Services", 1999).

10.   As per claim 1, HP teaches the invention substantially as claimed

including a method in a computer system executing a Web-based application

(HP introduction section), said method comprising the step of:

associating one of a plurality of different priorities with each one of a

plurality of different HTTP requests that are processed by an application (page 2,

classifies requests section, 1st paragraph, lines 1-3);

establishing a plurality of different, separate queues (fig.3; page 1,

technology section, 1st paragraph, lines 15-19);

associating each one of said plurality of different queues with a different

one of a plurality of priorities (fig. 3; page 3, classifies requests section, 3rd

paragraph, lines 1-8, queues request section, 1st paragraph, lines 1-4); and

for each one of said plurality of HTTP requests, storing one of said

plurality of HTTP requests in one of said plurality of different queues that is

associated with one of said plurality of priorities that is associated with said one

of said plurality of HTTP requests, wherein all of said plurality of HTTP requests

that are associated with a first one of said plurality of priorities are stored in a first

one of said plurality of different queues that is associated with said first one of

said plurality of priorities, and all of said plurality of HTTP requests that are

associated with a second one of said plurality of priorities are stored in a second

one of said plurality of different queues that is associated with said second one of

said plurality of priorities (pages 2-3, request controller section);

HP did not specifically teaches completing processing of one of said

plurality of HTTP requests that are stored in said first one of said plurality of

different queues before beginning processing of one of said plurality of HTTP

requests that are stored in said second one of said plurality of different queues

regardless of whether said first one of said plurality of priorities is a higher priority

than said second one of said plurality of priorities.

11.   However, Bhatti teaches completing processing of one of said plurality of

HTTP requests that are stored in said first one of said plurality of different queues

before beginning processing of one of said plurality of HTTP requests that are

stored in said second one of said plurality of different queues regardless of

whether said first one of said plurality of priorities is a higher priority than said

second one of said plurality of priorities (page 68, request scheduling section,

lines 1-14).

12.   It would have been obvious to one of an ordinary skill in the art at the time

the invention was made to have combined the teaching of HP, and Bhatti

because Bhatti teaching of completing processing of one of said plurality of

HTTP requests that are stored in said first queues before beginning processing

one of said plurality of HTTP requests that are stored in said second one of said

plurality of different queues regardless the priority order between the two queues

would improve the performance of HP's system by supporting distinct

performance levels for different classes of users and maintaining predictable

performance even when the server is subjected to a client request rate that is

several times greater than server's maximum processing rate (Bhatti, abstract,

lines 9-12).

13.   As per claim 2, HP further teaches:

        associating one of a plurality of types or requests with each one of said

plurality of different priorities (page 3, classifies requests section, 3rd paragraph,

lines 1-8);

        identifying a type of each of said plurality of HTTP requests (page 2,

request classifies section, 2nd paragraph, lines 1-2; page 3, classifies requests

section, 2nd paragraph, lines 3-8); and

        for each one of said plurality of HTTP requests, determining one of said

plurality of different priorities associated with a type that was determined for each

of said plurality of HTTP requests (page 2, classifies requests section).

14.   As per claim 5, HP further teaches:

receiving said plurality of HTTP requests by said application (fig. 2); and

determining on of said plurality of different priorities that is associated with

a type of each one of said plurality of HTTP requests (figs. 2 & 3).

15.   As per claims 8, Bhatti further teaches:

storing ones of said plurality of requests having a type associated with a

high priority in one of said plurality of queues that is associated with said high

priority (fig. 3);

storing ones of said plurality of requests having a type associated with a

low priority in one of said plurality of queues that is associated with said low

priority (fig. 3); and

completing processing of said ones of said plurality of requests stored in

said one of said plurality of queues that is associated with said high priority

before processing said ones of said plurality of requests stored in said one of

said plurality of queues that is associated with a low priority (page 68, request

scheduling section, lines 1-14).

16.   As per claims 9-10, 13, and 16, these are computer program product

claims that correspond to the method claims 1-2, 5, and 8. Therefore, these

claims are rejected with the same reason as the method claims 1-2, 5, and 8

above.

17.   As per claims17-18, 21, and 24, these are computer system claims that

correspond to the method claims 1-2, 5, and 8. Therefore, these claims are

rejected with the same reason as the method claims 1-2, 5, and 8 above.

18.   Claims 6, 14, and 22 are rejected under 35 U.S.C. 103(a) as being

unpatentable over HP WebQoS (hereafter HP) ("HP WebQoS Overview", 1999),

in view of Bhatti et al ("Web Server Support for Tiered Services", 1999), as

applied in claim 1 above, and further in view of Ferguson (U.S. Patent No.

6769019).

19.   Ferguson was cited in the last office action.

20.   As per claim 6, HP further teaches the step of:

receiving said plurality of HTTP requests by said application (fig. 2);

determining a type of said one of said plurality of requests (page 2,

request classifies section, 2nd paragraph, lines 1-2; page 3, classifies requests

section, 2nd paragraph, lines 3-8);

identifying one of said plurality of priorities that is associated with said type

(page 2, classifies requests section); and

storing said one of said plurality of requests in said identified one of said

plurality of queues (page 3, queues requests section).

HP and Bhatti did not specifically teaches:

determining whether there is a backlog of pending requests waiting to be

processed by said application; and

in response to a determination that there is no backlog, immediately

processing said one of said plurality of HTTP requests.

21.   However, Ferguson teaches:

determining whether there is a backlog of pending requests waiting to be

processed by said application (col. 12, lines 2-3); and

in response to a determination that there is no backlog, immediately

processing said one of said plurality of HTTP requests (col. 12, lines 3-4).

22.   It would have been obvious to one of an ordinary skill in the art at the time

the invention was made to have combined the teaching of HP, Bhatti, and

Ferguson because Ferguson is teaching of determining a backlog of pending

requests and immediately processing the requests would improve the

performance of HP and Bhatti's system by reducing or eliminating the user's wait

time for downloading (Ferguson, col. 3, lines 18-19).

23.   As per claim 14, it is a computer program product claim that corresponds

to the method claim 1. Therefore, this claim is rejected with the same reason as

the method claim 1 above.

24.   As per claim 22, it is a computer system claim that corresponds to the

method claim 1. Therefore, this claim is rejected with the same reason as the

method claim 1 above.

Response to Arguments

25.   Applicant's arguments with respect to claims 1-2, 5, 6, 8-10, 13-14, 16-18,

21-22, and 24 have been considered but are moot in view of the new ground(s)

of rejection.

Conclusion

26.   Applicant's amendment necessitated the new ground(s) of rejection

presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as

set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

27.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer N. To whose telephone number is (571) 272-7212. The examiner can normally be reached on M-T 7AM- 4:30 PM, F 7AM- 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer N To
Examiner
Art Unit 2195

MENG-AI T. AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100